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7 UNITED STATES DISTRICT COURT
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9
DISTRICT OF NEVADA
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11 SERAPH CONSULTING, INC., a Nevada
 12 corporation,
 13 Plaintiff,
 14 v.

CASE NO.: 2:19-cv-02201-RFB-NJK

15 SMP DEUTSCHLAND GmbH, a Germany
 16 business entity; and SMP AUTOMOTIVE
 17 SYSTEMS ALABAMA, INC., a Delaware
 18 corporation,
 19 Defendants.

**STIPULATION AND ORDER TO
 DISMISS WITHOUT PREJUDICE**

20 SMP DEUTSCHLAND GmbH, a Germany
 21 business entity, and SMP AUTOMOTIVE
 22 SYSTEMS ALABAMA, INC., a Delaware
 23 corporation,
 24 v.

25 Counterclaimants,
 26 v.

27 SERAPH CONSULTING, INC., a Nevada
 28 corporation,
 29 Counterdefendant.

30 IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel of
 31 record for SERAPH CONSULTING, INC., a Nevada corporation ("Plaintiff"); and the undersigned
 32 counsel of record for Defendants/Counterclaimants, SMP DEUTSCHLAND GmbH, and SMP
 33 AUTOMOTIVE SYSTEMS ALABAMA, INC. ("Defendants"), as follows:

- 34 1. The Plaintiff's claims against Defendants, and the Defendants' Counterclaims
 35 against the Plaintiff, shall be and the same are hereby dismissed, without prejudice.
 36 2. Neither party shall be entitled to any award of costs or fees to be entered in this Case
 37 No. 2:19-cv-02201-RFB-NJK as a result of this dismissal; but the prevailing party

1 in any future suit shall not be prevented by this Stipulation and Order, from seeking,
2 as part of any award of costs or fees awarded at the conclusion of that future suit, its
3 costs and fees incurred in this Case, on any grounds which exist to pursue the same.

- 4 3. Both parties and their counsel agree to participate in the mediation currently
5 scheduled for June 15, 2020, or such other date to which the parties agree, with
6 JAMS, mediator Phillip M. Pro, notwithstanding the dismissal of this suit, by and
7 through the attendance of their principals or others with full settlement authority,
8 together with counsel.
- 9 4. All statutes of limitations and repose governing Plaintiff's claims in this action and
10 any defenses thereto are hereby tolled, *nunc pro tunc* as of the date this suit was filed,
11 namely December 20, 2019; and all statutes of limitations and repose governing
12 Defendants' Counterclaims in this action and any defenses thereto are hereby tolled,
13 *nunc pro tunc* as of the date Defendants' Counterclaims were filed, namely January
14 14, 2020. Such tolling shall expire on the sooner of (a) ten (10) days after
15 unsuccessful conclusion of the mediation described above, or (b) 120 days from the
16 date of the Court's order on this stipulation. The parties may extend the tolling period
17 by written agreement, signed by representatives of both parties. None of the time or
18 days during the tolling period, including any extensions, shall count toward any
19 statutes of limitations or repose (or other time bar defenses) applicable to
20 (a) Plaintiff's claims in this action or any defenses thereto or (b) Defendants'
21 counterclaims in this action or any defenses thereto.
- 22 5. During the tolling period, Plaintiff shall not institute any suit or other proceeding
23 against either or both Defendants involving substantially the same claims asserted in
24 this action; and neither Defendant shall institute any suit or proceeding against
25 Plaintiff involving substantially the same claims asserted in their counterclaim in this
26 action.
- 27 6. The undersigned current counsel for the Defendants shall accept service on behalf of
28 the Defendants named herein of any new suit filed by the Plaintiff involving
substantially the same claims asserted in this action

7. Both parties waive their right, pursuant to FRCP 41(d), to seek the costs incurred in this suit (Case No. 2:19-cv-02201-RFB-NJK), as a prerequisite to maintaining any subsequent new suit filed by either party hereafter, but such costs may only be pursued by the prevailing party in any such subsequent suit, upon the final adjudication thereof, and solely if and to the extent of any authority existing for such an award, if any, at that time, exclusive of FRCP 41(d).

8. Both parties waive the right to hereafter aver that this present suit (Case No. 2:19-cv-02201-RFB-NJK) including either the claims or the counterclaims asserted herein, shall be treated as having been voluntarily dismissed, for purposes of the two dismissal rule of FRCP 41(a)(1)(B), or any other similar rule of civil procedure which might apply to any future suits brought hereafter, and both parties stipulate that this dismissal shall not count as one dismissal for purposes of any such two-dismissal rule.

DATED this 30th day of April, 2020.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

/s/ D. Chris Albright

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IT IS SO ORDERED:

DATED this 30th day of April, 2020.

BODMAN PLC

/s/ Jeffrey G. Raphelson

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**RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE**

DATED this 5th day of May, 2020.

ORDER

IT IS SO ORDERED this ____ day of _____, 2020.

UNITED STATES DISTRICT COURT JUDGE

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